

ORDINANCE: REGULATING NOISE

Section I: Purpose

The purpose of this Ordinance is to regulate the making, creation, or maintenance of excessive, unnecessary or unusually loud noises that, in their time, place and manner adversely affect and are a detriment to public health, comfort, safety and welfare of the residents of the Town of Windham.

Section II: Authority

This Ordinance has been enacted pursuant to the statutory authority granted to the Town of Windham by RSA 31:19, I (n)

Section III: Definitions

For the purpose of this Ordinance, the following words and phrases when used herein shall be construed as follows:

- A) *Town* - The Town of Windham, New Hampshire.
- B) *Board* - Board of Selectmen of the Town of Windham.
- C) *Construction* - Any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition.
- D) *Continuous Sound* - Any sound that exists, essentially without interruption, for a period of 10 minutes or more.
- E) *Demolition* - Dismantling or intentional removal of structures, utilities, public or private right of way surfaces or similar property.
- F) *Impulse Noise* - Any noise of short duration, usually less than one second, and of high intensity, with an abrupt onset and rapid decay.
- G) *Noise Disturbance* - Any sound, whether a continuous sound or an impulse noise which is loud or unreasonable and which disturbs a reasonable person with normal sensitivities.
- H) *Person* - Any individual, partnership, company, corporation, association, firm, organization, governmental agency, administration or department, or any other group of individuals, or any officer or employee thereof.
- I) *Power Tool* - Any device powered mechanically, by electricity, by compressed air, by gasoline, by diesel fuel or by any other fuel, which is intended to be used or is actually used for but shall not be limited to, the performance of such functions as cutting, blowing, nailing, stapling, sawing, vacuuming or drilling.
- J) *Residential Property* - Any real property developed and used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

K) Undue hardship - A situation or circumstance in which it is unreasonable to require the applicant to conduct the regulated activity during the hours permitted under the ordinance.

~~K-L) Permissible Fireworks~~ - Permissible fireworks means consumer fireworks, except for those items that are prohibited pursuant to RSA 160-B:16, 160-B:16-b, and 160-B:16-c as amended

Section IV: Regulation Applicability

A) It shall be unlawful for any person to make, continue, carry on, or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others or engages in the following activities if such activities create a noise disturbance that generates a complaint:

- 1) Between ~~10:00~~ 9:00 p.m. and 7:00 a.m. (Monday through Saturday) and ~~10:00- 9:00~~ p.m. and 9:00 a.m. (Sunday) the loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, trashcans, dumpsters, or similar objects.
- 2) Between ~~10:00- 9:00~~ p.m. and 7:00 a.m. (Monday through Saturday) and ~~10:00- 9:00~~ p.m. and 9:00 a.m. (Sunday) the operation or use of ~~heavy~~ construction vehicles and equipment involved in construction, demolition, property maintenance or similar activity, including, but not limited to, bulldozers, graders, dump trucks, backhoes, earthmoving equipment, front end loaders and log skidders.
- 3) Between ~~10:00- 9:00~~ p.m. and 7:00 a.m. (Monday through Saturday) and ~~10:00- 9:00~~ p.m. and 9:00 a.m. (Sunday) the operation or use of tools, power tools, or ~~construction~~ equipment to include, but not limited to: cement mixers, rock crushers, hammers, staple or nail guns, ~~power tools~~ saws and drills whether involved in construction, demolition, repair, maintenance or similar activity.
- 4) ~~Between 10 9:00 p.m. and 7:00 a.m. (Monday through Saturday) and 10 9:00 p.m. and 9:00 a.m. (Sunday), except during and the 24-hour period immediately following a snowfall or other weather-related emergency, the operation of lawnmowers, leaf blowers, snow blowers, tractors, chain saws, power augers, or other machinery powered by an internal combustion engine.~~
- ~~4-5) Between 10:00 p.m. and 9:00 a.m. (Monday through Sunday) the discharge of permissible fireworks~~

Section V: Exemptions

A) The following uses and activities shall be exempt from the foregoing noise/time restrictions:

- 1) Noise of safety signals, warning devices, and emergency pressure relief valves.

- 2) Noise resulting from any public safety vehicle when responding to an emergency call or acting in time of emergency, or any public safety personnel when otherwise performing their duties.
- 3) Noise resulting from emergency maintenance work or work that cannot be performed during the day due to mitigating factors such as traffic volume or facility use, as performed by the Town, the School District, the State, public utility companies, or a private property owner in the event of a legitimate emergency.
- 4) Noise resulting from snow removal operations performed by the Town, the State, and other types of private or commercial snow removal operations.
- 5) Any other noise resulting from activities of a temporary duration permitted by the law and for which a license or permit therefore has been granted by the Town.

Section VI: Waiver

- A) An application for a waiver the provisions of this ordinance on the basis of undue hardship may be made to the Board of Selectmen. Any such waiver granted by the Board of Selectmen shall set forth all conditions pertaining to the specified noise, and a reasonable time limit for its abatement.

Section VII:

- A) These requirements shall not apply where such matters are governed by State Law

Section VIII: Penalties

- A) Any person who violates the provisions of this ordinance or any landowner who permits violation of the provisions of this ordinance shall be guilty of a violation under RSA 625:9 (V)(a) and may be penalized by a fine of not more than \$300 for the first offense, \$500 for the second offense, and \$1000 for the third and any subsequent violations thereafter.

Section IX: Validity

- A) If any section, clause, provision or phrase of this ordinance shall be held to be invalid or unconstitutional, such holding shall not affect, impair, or invalidate any other section, clause, or provision, portion or phrase of this ordinance

Section X: Enforcement

- A) These regulations are enforceable by the Windham Police Department

Section XI: Effective date/amendments

- A) This ordinance shall become effective March 30, 2008 and may from time to time be amended by the Board of Selectmen at a regularly scheduled meeting subsequent to a public hearing duly posted fourteen (14) days prior.

Adopted at Town Meeting: March 11, 2008